

1 **NEFF & BOYER, P.C.**
2 CAMP LOWELL CORPORATE CENTER
3 4568 E. CAMP LOWELL DRIVE
4 TUCSON, ARIZONA 85712
5 PHONE (520) 722-8030
6 FAX (520) 722-8032
7 JEFFREY M. NEFF
8 **ARIZ. BAR #5603 PCC #41908**
9 jeff@nefflawaz.com
10 AMANDA C. FIFE
11 **ARIZ. BAR #29121 PCC #66443**
12 amanda@nefflawaz.com

13 Attorneys for Debtor

14 **IN THE UNITED STATES BANKRUPTCY COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 In re:

17 TUCSON ONE, LLC

18 Debtor.

19 **CHAPTER 11 CASE**

20 **Case No.: 4:17-bk-11219-BMW**

21 **RESPONSE TO U.S. BANK'S**
22 **OBJECTION TO DEBTOR'S**
23 **DISCLOSURE STATEMENT DATED**
24 **DECEMBER 21, 2017**

25 COMES NOW, Debtor and Debtor-in-Possession, Tucson One, LLC ("Debtor"),
26 by and through undersigned counsel, and files this Response to U.S. Bank's Objection
to Debtor's Disclosure Statement dated December 21, 2017. This Response is
supported by the following:

27 1. 11 U.S.C. § 1125(b) provides that in order for Debtor to solicit acceptance
28 of its plan, its disclosure statement must first be approved by the Court has having
29 "adequate information" that would enable a hypothetical reasonable investor typical of

1 holders of claims or interests of the relevant class to make an informed judgment about
2 the plan.

3 2. U.S. Bank appears to cite a number of cases that are not controlling in this
4 jurisdiction, and asserts arguments best suited for the next step of plan confirmation.

5 3. Debtor's plan is not, on its face, non-confirmable as a matter of law, and
6 Debtor does anticipate an impaired accepting class of creditors. Debtor therefore
7 should be entitled to proceed with its filed Disclosure Statement, presuming the Court
8 finds adequate information is provided therein.

10 4. Debtor's plan furthermore, is feasible. To demonstrate that a plan is
11 feasible, a debtor need only show a reasonable probability of success; the Code does
12 not require the debtor to prove that success is inevitable, and a relatively low threshold
13 of proof will satisfy the feasibility requirement. See In re Brotby, 303 B.R.177, 191
14 (BAP, Ninth Cir. 2003).

15 5. The Bankruptcy Court has discretion in determining what constitutes
16 adequate information, and is made on a case-by-case basis. Id at 193.

17 6. Debtor is actively working to secure a tenant for the Property sufficient to
18 pay the claims, which is in prospect.

19 7. Upon review, Debtor's Disclosure Statement meets the requirement and
20 standard of adequate information, and should therefore be approved by the Court.

21 WHEREFORE, Debtor moves this Honorable Court for an Order denying the
22 relief requested by U.S. Bank and for other and further relief as the Court deems just
23 and proper, and that Debtor be permitted to move forward with the approval of its
24 Disclosure Statement dated December 21, 2017.
25
26

1 Dated this 21st day of May, 2018.

2 **NEFF & BOYER, P.C.**

3 By: /s/ Jeffrey M. Neff, AZB# 5603

4 Jeffrey M. Neff

5 *Attorney for Debtor*

6 Filed this 21st day of May, 2018, with:

7 United States Bankruptcy Court, District of Arizona

8 38 South Scott Ave.

9 Tucson, Arizona 85701

10 CM/ECF

11 COPIES of the foregoing were

12 Served/Mailed on the 21st day of May, 2018

13 Via E-Mail to:

14 Dean C. Waldt, Esq.

15 waldtd@ballardspahr.com

16 Michael A. DiGiacomo, Esq.

17 digiacomom@ballardspahr.com

18 BALLARD SPAHR, LLP

19 1 East Washington Street, Suite 2300

20 Phoenix, Arizona 85004-2555

21 *Attorneys for U.S. Bank, NA as Trustee*

22 BY: Amanda C. Fife

23 http://127.0.0.1:8881/1/1. Open/Goldman, Henry/Tucson One LLC Bankruptcy/response to US Bank objection to disclosure
statement.docx